

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LESLIE JAMES PICKERING,

Plaintiff,

v.

DECISION AND ORDER
19-CV-417

U. S. DEPARTMENT OF JUSTICE, and
U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendants.

This Freedom of Information Act (“FOIA”) case filed by Plaintiff Leslie James Pickering was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1) for pretrial proceedings. Plaintiff initiated this lawsuit seeking disclosure of records under FOIA, 5 U.S.C. § 552, that he alleges were improperly withheld by Defendants Department of Justice (“DOJ”) and Department of Homeland Security (“DHS”).

On November 30, 2020, summary judgment motions were filed by Defendant DOJ on behalf of DHS (Dkt. 23) (“DHS’s motion”), ATF (Dkt. 27) (“ATF’s motion”), and FBI (Dkt. 31) (“FBI’s motion”) (together, “Defendants’ motions”). Plaintiff filed a combined memorandum of law opposing all three of Defendants’ motions on the merits and also argued in support of an award of attorney fees. Dkt. 37 at 11.

On November 22, 2021, the Magistrate Judge filed a Report and

Recommendation (“R&R”) (Dkt. 42) that recommended granting all three motions for summary judgment. Plaintiff filed timely objections on December 6, 2021, (Dkt. 43) and a response brief was filed on December 14, 2021, (Dkt. 45). On March 23, 2023, the Court issued a Decision and Order (Dkt. 47) which ADOPTED in part and REJECTED in part Magistrate Judge Foschio’s R&R, and remanded the issue of Plaintiff’s pending request for attorney’s fees from Defendant DOJ back to Magistrate Judge Foschio to make specific findings as to the appropriate amount of attorney’s fees.

On October 2, 2024, Plaintiff filed an affidavit (Dkt. 49) in support of his request for attorney fees. On October 7, 2024, Defendant responded (Dkt. 50). Magistrate Judge Foschio issued another R&R (Dkt. 51) on November 14, 2024, which recommended that Plaintiff’s request for attorney fees be granted in part and denied in part. Specifically, Magistrate Judge Foschio recommended that Plaintiff be awarded \$1,666.67 in attorney fees.

Federal Rule of Civil Procedure 72(b)(3) provides, “[t]he district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Here, no objections to the RR&O have been filed. “When no timely objection is filed, the [C]ourt need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” 1983 Advisory Committee Note to Fed. R. Civ. P. 72(b); see *Patton v. Ford Motor Co.*, 14-CV-0308-RJA-HBS, 2017 WL 2177621 (W.D.N.Y. May 18, 2017).

The Court finds no error with respect to Magistrate Judge Foschio’s

recommendation, and hereby adopts the R&R in its entirety.

Therefore it is hereby

ORDERED that, for the reasons set forth in the R&R, Plaintiff's request for attorney's fees should be awarded in the amount of \$1,666.67; and it is further

ORDERED that , the Clerk of the Court shall terminate Defendant DOJ from the case; and it is further

ORDERED that, Plaintiff's remaining claims against DHS is remanded to Magistrate Judge Foschio for further proceedings.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: December 12, 2024